

ORIGINAL

Item Nos. 29 & 30

STATE OF NEW JERSEY
CASINO CONTROL COMMISSIONCONSOLIDATED PROCEEDINGS FOR RENEWAL :
OF TRUMP PLAZA ASSOCIATES AND :
TRUMP'S CASTLE ASSOCIATES :Wednesday, May 8, 1991
Atlantic City Commission Office
Tennessee & Boardwalk
Atlantic City, NJ 08401**VOLUME II**B E F O R E:STEVEN P. PERSKIE, CHAIRMAN
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A P P E A R A N C E S:

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1 CHAIRMAN PERSKIE: Not yet, let's do
2 the--let's proceed to agenda Item No. 30 then we will
3 do the public. We also have to deal, we had one
4 matter carried over from this morning.

5 All right, continuation in the matter
6 of the applications of Trump's Castle Associates and
7 Trump Plaza Associates for renewal of their casino and
8 attendant licenses.

9 First, let me indicate for the record
10 that a number of additional exhibits have been
11 proffered. My understanding is that the Division has
12 reviewed the exhibits and has no objection to them
13 being received into evidence and they include the
14 following: A-47B which is a revised offering circular
15 which is designed to supersede--excuse me, A-47C which
16 is a revised circular designed to supercede A-47B, is
17 that correct?

18 MR. FUSCO: That is correct.

19 MR. AURIEMMA: That is correct.

20 CHAIRMAN PERSKIE: And everybody
21 agrees that should be received into evidence?

22 MR. FUSCO: Yes, sir.

23 CHAIRMAN PERSKIE: That will be
24 received in evidence.

25 (A-47C was marked into evidence)

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1 CHAIRMAN PERSKIE: A-47D is a letter
2 of transmittal pursuant to the offering circular.
3 That's also offered for Trump's Castle?

4 MR. FUSCO: Correct, yes, sir.

5 MR. AURIEMMA: No objection.

6 CHAIRMAN PERSKIE: That will be
7 received in evidence.

8 (A-47D was marked into evidence)

9 CHAIRMAN PERSKIE: A-47E is an
10 affidavit of mailing of the offering circular also
11 submitted in evidence?

12 MR. FUSCO: Yes, sir.

13 MR. AURIEMMA: No objection.

14 CHAIRMAN PERSKIE: Received in
15 evidence.

16 (A-47E was marked in evidence)

17 CHAIRMAN PERSKIE: A-52 is a letter
18 with an affidavit attached sent by Ms. Wild to me in
19 response to some of the dialogue at the last meeting
20 and about which more discussion will be had in a
21 little while. As I understand it that is offered
22 without objection into evidence.

23 MR. FUSCO: Yes, sir.

24 MR. DOOLEY: That is correct, Mr.
25 Chairman.

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1 CHAIRMAN PERSKIE: Received in
2 evidence.

3 (A-52 and A-53 were marked into
4 evidence)

5 CHAIRMAN PERSKIE: A-53 which I will
6 receive formally in evidence today is a May 6 letter
7 from Mr. Bollenbach pursuant to the weekly obligation
8 which I will note for the record was received in the
9 Commission yesterday and was made available publicly
10 yesterday. Before I leave that matter, Mr. Fusco,
11 because it doesn't directly relate to the Plaza or
12 Castle applications here, but putting on our hat as
13 consolidated Taj Mahal process, the letter is
14 satisfactory in form insofar as it generally
15 identifies subjects and people with whom discussions
16 were ongoing. But I think that future letters should
17 do two things. Number one, be somewhat more
18 particular with respect to the subject of discussions
19 that are identified as taking place, that is to say
20 identifying the subject matter of the discussions and
21 some sense of what the schedule of those discussions
22 is and when those discussions may be reducable to
23 paper. Secondly, with respect to those discussions
24 that are reduced to some form of paper, either
25 proposed term sheets or otherwise, and where reference

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1 to that fact is made in the letter, the paper should
2 be attached as exhibits. I will indicate that it is
3 my view that while in general subject to any specific
4 application of sealing, a cover letter and general
5 description of what's going on should, in fact, be
6 considered as evidence when submitted and should be
7 made public, that the enclosures in the forms of any
8 documents and the terms of any term sheets and the
9 like in the ordinary course will not be released until
10 they are formally admitted into evidence which I
11 contemplate in this context would be June 17.

12 MR. FUSCO: Yes, sir.

13 CHAIRMAN PERSKIE: But they should
14 be, wherever there is a reference that there is paper
15 the Commission should be supplied with the paper as an
16 attachment or an exhibit to the cover letter.

17 MR. FUSCO: We will do so.

18 MR. ZIMMERMAN: Mr. Chairman, while
19 we are completing the record, on the subject of A-52,
20 the PMRs, I would submit as an addendum to the staff
21 report, which has been premarked C-9A, additional
22 statistics prepared by the affirmative action staff on
23 PMR filings for Plaza and for the industry as a whole
24 during the first quarter of '91.

25 CHAIRMAN PERSKIE: This would be

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1 what, attached to C-9?

2 MR. ZIMMERMAN: Yes.

3 CHAIRMAN PERSKIE: Therefore C-9A?

4 MR. ZIMMERMAN: Yes.

5 CHAIRMAN PERSKIE: Mr. Fusco and
6 Auriemma, any objection?

7 MR. FUSCO: Two pages?

8 CHAIRMAN PERSKIE: Two pages.

9 MR. FUSCO: No objection.

10 CHAIRMAN PERSKIE: Pretty little
11 computer sheet here. That will be received in
12 evidence.

13 (C-9A was marked into evidence)

14 CHAIRMAN PERSKIE: There is a
15 reference hear, Mr. Zimmerman, I can't--I don't know
16 if it's Xd or not, what is C-12? Have we received
17 that? It doesn't show it's been received.

18 MR. FUSCO: C-12 is the report.

19 CHAIRMAN PERSKIE: Of our financial
20 evaluation director as to Trump's Castle. Has that
21 been received in evidence?

22 MR. FUSCO: I believe so.

23 CHAIRMAN PERSKIE: I think it has.
24 Maybe the X--oh, there it is or maybe it is. I can't
25 tell if it's under the staple or not.

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1 MR. ZIMMERMAN: Yes, there is an X
2 under my staple.

3 CHAIRMAN PERSKIE: If there is an X
4 under your staple, Mr. Zimmerman, there must be one
5 under mine.

6 All right, now where are we? I guess
7 that takes us to closing arguments.

8 MR. ZIMMERMAN: Chairman, if I may,
9 just one other housekeeping item, on the Tortoise and
10 Unicorn ICA, the application must be completed by next
11 Wednesday and it is complete at this point other than
12 the trust agreement which is close to complete and it
13 might be appropriate to delegate that responsibility
14 to make the ruling on the completeness of the
15 application.

16 CHAIRMAN PERSKIE: I would request a
17 motion from the Commission delegating to the Vice
18 Chair or to myself acting separately or in concert to
19 review and approve the sufficiency of the document
20 when submitted.

21 COMMISSIONER WATERS: So moved.

22 COMMISSIONER HURLEY: Second.

23 CHAIRMAN PERSKIE: Any comment or
24 discussion?

25 All in favor will so indicate.

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1 The record will reflect the motion
2 carries unanimously.

3 (All Commissioners present voted in
4 favor of the motion)

5 CHAIRMAN PERSKIE: Does that clean
6 the decks or clear the decks?

7 MR. AURIEMMA: It does I think.

8 MR. FUSCO: One minute, I had one
9 question of Mr. Zimmerman.

10 Yes, Mr. Chairman, I have nothing
11 further.

12 CHAIRMAN PERSKIE: Mr. Auriemma.

13 MR. AURIEMMA: On April 29, 1991 the
14 Commission commenced renewal proceedings with respect
15 to Trump Plaza Associates and Trump's Castle
16 Associates with the primary focus being upon the
17 financial stability of these two licensees. In many
18 respects what is occurring with these two licensees is
19 similar to that which is also happening regarding the
20 Taj Mahal and Donald J. Trump, that is fiscal
21 reorganization.

22 From the testimony that we have heard
23 and the evidence introduced, certain matters are
24 clear. Both the FMR Trump Plaza transaction and the
25 Trump Castle offering circular must be successful if

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1 these two facilities are to meet their mid June 1991
2 bondholder sinking fund obligation. Operations
3 plainly have failed to generate sufficient funds to
4 meet the financial obligations. As a result both
5 properties are borrowing money to meet principal
6 payments thereby sustaining the cash flow deficit.
7 Assume for the moment, and we will know soon enough,
8 that these transactions are, in fact, timely
9 consummated, the next critical evaluation is of the
10 cash position of both licensees. This is so since
11 both will be relying upon cash generated from
12 operations and Castle will also be relying on asset
13 sales to satisfy bondholder interest payments in mid
14 June as well as certain other obligations. Neither
15 facility at present has any credit lines available in
16 the event of cash shortfall for working capital.

17 The projections and the testimony
18 that have been received which assume the FMR
19 transaction and the exchange offer are consummated
20 suggest that cash flow will be sufficient to satisfy
21 the June obligation. Reality, of course, may be
22 different. As to Trump Castle that facility has
23 undoubtedly benefited from two asset sales which will
24 net it approximately seven million dollars. Trump
25 Plaza, on the other hand, is seemingly relying solely

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1 on operational success.

2 Saturday, June 15 is rapidly
3 approaching. In actuality, therefore, Monday, June 17
4 is the day when these bondholder obligations must be
5 satisfied. We will certainly know by that date the
6 cash positions of each entity and whether the
7 bondholder obligations have, in fact, been satisfied.

8 We know from the Commission's
9 decision regarding the Taj Mahal and Mr. Trump that
10 they will be before this Commission on Monday, June
11 17. In the Division's view we believe that the
12 Commission should require Trump's Castle Associates
13 and Trump Plaza Associates to be present that day as
14 well and establish that the payments have been made
15 and explain that adequate resources exist to ensure
16 that patrons, taxes and fees and employees are also
17 timely paid.

18 With respect to progressive jackpots
19 at each facility, the state must be provided with
20 clear and convincing evidence that cash resources or
21 credit lines exist to guarantee the payment of these
22 jackpots to the casino patrons.

23 In the past when cash has become a
24 problem for a casino licensee, various conditions have
25 been imposed to protect certain constituents. Most

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1 significantly these conditions have centered around
2 dedicated accounts for jackpot liabilities, fees and
3 taxes and payroll. As we sit here today, we do not
4 believe that there is a present need for these
5 accounts. However, cash may become critically low for
6 each of these licensees and these types of accounts
7 may be necessary if not essential to protect the
8 public interest. This is a matter that should be
9 further addressed on June 17 we believe.

10 Of course, we further believe that
11 these two licensees should make every effort to
12 procure credit lines in the event that cash balances
13 fall to perilously low levels. We urge the Commission
14 to require that these licensees attempt to obtain such
15 credit lines and report to the Commission and Division
16 on a weekly basis regarding their efforts. If credit
17 lines are established, that would presumably obviate
18 the need for even considering the imposition of
19 dedicated accounts. We do not believe that the
20 procurement of credit lines is onerous specifically
21 since one licensee, Trump's Castle, must obtain a
22 letter of credit for the December 1991 interest
23 payment to the new A-3 bondholders. Just as these
24 bondholders have sought assurances that they will be
25 timely paid, we see equal assurances for the gaming

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1 public and the state.

2 On a going forward basis both
3 regulatory agencies have to be diligent in monitoring
4 payments by these two licensees. Further, in June of
5 1992 events will have to unfold favorably for Trump's
6 Castle and Trump Plaza to continue to meet bondholder
7 obligations. As we know from the projections Trump
8 Plaza is relying upon an additional 25 million dollar
9 principal amount of bonds being advanced in 1992.
10 Yet, the sole discretion in this matter rests with
11 FMR. Similarly, in June 1992 we will have to see a
12 successful exchange offering concerning Castle bonds
13 or some other restructuring.

14 What all of this portends in our view
15 is that careful watching by the Commission and the
16 Division will be required for some time and if matters
17 do not develop as hoped for by the licensees speedy
18 regulatory action may be necessary. In the meantime,
19 however, we should not hamper the positive efforts
20 that have been made by these two licensees to deal
21 with their respective fiscal dilemmas provided the
22 public interest is safeguarded.

23 CHAIRMAN PERSKIE: Thank you, Mr.
24 Auriemma.

25 Mr. Fusco, in your closing I would

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1 appreciate it if you would address yourself to the
2 implications of C-9A specifically with respect to the
3 apparent differential, if you will, between the
4 numbers that are represented therein and the numbers
5 that are included in the letter that was sent to me.

6 MR. FUSCO: If I could, Mr. Chairman,
7 I would like to address that at the outset.

8 The affidavit that was provided as
9 part of A-52 recites a series of numbers which relates
10 to project manning reports, filing and the timeliness
11 thereof. C-9A, one of the two pages which is entitled
12 Trump Plaza timeliness for first quarter 1991 recites
13 a series of numbers which reflect 16 additional
14 project manning reports. I learned about the
15 differential when I arrived here about an hour ago.
16 It is clear to me that those--of those 16, 11 were
17 submitted by single men. I am advised by Plaza staff
18 that those 11, there was confusion because the
19 subcontractor who was responsible, whose project
20 manning reports they were had received, we believe,
21 incorrect directions from its prime contractor who is
22 our vendor. We have spoken to the subcontractor. The
23 subcontractor historically has a very good record from
24 our experience with the Commission in timely filing
25 these reports.

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1 CHAIRMAN PERSKIE: Who is the
2 subcontractor?

3 MR. FUSCO: Calvi Electric and from
4 all our experience, Mr. Chairman, we have had very
5 good success with dealing with them. We believe that
6 the problem is solved. As I say, I learned of this
7 and so did Ms. Wild about an hour ago and that's my
8 explanation. So that I think our numbers are
9 inaccurate to the extent that they cut off at a time
10 earlier than those 16 reports. I don't think we are
11 talking about anything other than that.

12 CHAIRMAN PERSKIE: That's exactly
13 what it is. The concern though is that when you add
14 in the 16 late reports or later reports they skew the
15 percentages.

16 MR. FUSCO: That's true, and I make
17 one other observation, it is my understanding that the
18 Commission's focus on the timeliness of these reports
19 really is a focus on the efforts of the casino
20 licensee to insist upon timely reporting by its
21 vendors and subcontractors. In this particular case
22 in light of this particular vendor, the subcontractor
23 in this case, we believe that there was a
24 misunderstanding which is solved as to 11 of those
25 reports and that is what skewed our percentages.

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1 That's the most precise explanation I can provide at
2 this point in time.

3 CHAIRMAN PERSKIE: Do you have
4 anything on the other five?

5 MR. FUSCO: I haven't been able to
6 analyze the rest of them, Mr. Chairman. I will gladly
7 provide more information. I just don't have it.

8 CHAIRMAN PERSKIE: You should to Mr.
9 Thomas who is here and not necessarily right this
10 minute obviously, but on an ongoing basis I would like
11 to get some more data on that by the end of the week
12 and I would also like to know by the end of next week,
13 Mr. Thomas, what we have in our files with respect to
14 Calvi and whether from our point of view this is a
15 chronic problem with them or not.

16 MR. THOMAS: Yes, sir.

17 CHAIRMAN PERSKIE: All right.

18 MR. FUSCO: Members of the
19 Commission, Mr. Chairman, the issues presented by
20 these consolidated proceedings concern the financial
21 stability, integrity and responsibility through May
22 1993 of Trump Plaza which has operated in Atlantic
23 City for seven years, of the Castle which has operated
24 here for more than six years and, of course, of Donald
25 Trump who was first found qualified by this Commission

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1 almost 10 years ago.

2 As to Mr. Trump, the Commission three
3 weeks ago on April 18 in reviewing--in renewing the
4 Taj Mahal casino licenses recognized his continuing
5 good faith efforts to consummate agreements with his
6 lender banks and the apparent likelihood that these
7 obligations will be satisfactorily restructured.

8 In addition to the evidence in the
9 record at that time exhibits A-51 and A-53, the April
10 29 and May 6 reports of Mr. Bollenbach as to the
11 status of discussions with the lender banks clearly
12 demonstrate term sheets are now being drafted with
13 five of the banks and that verbal agreements are close
14 with the others. These weekly reports will, of
15 course, continue. Also now in evidence is exhibit
16 A-48 which is the revised cash flow forecast for Mr.
17 Trump as of April 25, 1991. Recognizing the
18 Commission has determined to resume the proceedings as
19 to Mr. Trump on June 17, the licensees submit that the
20 evidence in these proceedings as of today clearly
21 establishes financial stability, integrity and
22 responsibility required for Mr. Trump as a natural
23 person qualifier to the Trump Plaza and Castle casino
24 license.

25 As to the Plaza, it historically has

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1 been one of the most successful of the New Jersey
2 casinos, primarily because of its central boardwalk
3 location, its superior upscale facility, and its
4 appeal to the more premium player. 1990, however,
5 simply stated, was a very difficult year for Trump
6 Plaza. Not only did it feel the general impact of the
7 recession in the economy as it deepened, but also
8 contemporaneously with the opening of the Taj Mahal it
9 experienced the sudden resignation of its president
10 and chief operating officer. Now new executive
11 management is securely in place. Nicholas Ribis is
12 the chief executive officer of each of the three Trump
13 casinos, has taken a firm hold of the strategic and
14 financial planning of each property. Kevin DeSanctis
15 now brings as many years of management experience as
16 the principal casino executive at five major Nevada
17 casino hotels and his accounting and regulatory
18 backgrounds to Trump Plaza as its president and chief
19 operating officer. Mr. DeSanctis, with the approval
20 of Mr. Ribis, has solidified his on-site senior
21 management team, the majority of which was already in
22 place. With his direction Trump Plaza has now refined
23 its operating programs. In the words of Mr.
24 DeSanctis, Trump Plaza is and will continue as an
25 upscale operation which caters to more of a premium

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1 player. As he testified we think we have a great
2 product and we are going to concentrate on the
3 details. His intent is to implement a very simple,
4 straight forward program and to concentrate on
5 details.

6 The primary casino revenue
7 components, of course, are generated by table games
8 and slot operations. As to table games, Trump Plaza
9 as of five weeks ago has replaced its costly and
10 inefficient charter programs and junkets with a more
11 focused splinter program. Its straight forward and
12 newly implemented marketing policy is simply a patron
13 must play to receive complimentaries. Its operating
14 focus has now been redirected from a goal of
15 maximizing total revenue to the more appropriate
16 objective of maximizing its operating income.

17 As to slot operations Trump Plaza has
18 greatly strengthened its bus program with the addition
19 of Lily Simone as its new vice president in charge of
20 that function, has reduced the cost and increased the
21 inefficiency of its direct mail coin program by
22 selectively refining and reducing its target customer
23 base.

24 CHAIRMAN PERSKIE: You say increase
25 the inefficiency?

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1 MR. FUSCO: Increased the efficiency
2 is what I certainly meant to say and I'm sure Mr.
3 DeSanctis agrees. And has greatly increased its
4 service and attention to the highly profitable and
5 virtually cost-free walk in patrons which are so
6 easily available to its central boardwalk location.

7 Changes in the floor configuration
8 will add 200 slot machines including the highly
9 popular poker machines and contemplate conversion of
10 an underused gaming pit and a cocktail lounge to slot
11 operations, areas. These changes will provide Trump
12 Plaza slot patrons with a substantially enhanced
13 physical product.

14 The Trump Plaza forecasts we submit
15 are reasonable and attainable throughout the licensing
16 period. Its current cash position with anticipated
17 cash flow from operations will provide adequate
18 financial resources for the payment of its obligations
19 and the operation of its casino.

20 Mr. Ribis testified as to the sinking
21 fund payments due to Trump Plaza Funding bondholders
22 during June of 1991 and 1992, and as to exhibit A-41A,
23 which is the April 2, 1991 agreement between Trump
24 Plaza and Fidelity which the Commission this afternoon
25 found qualified as a financial source. The agreement

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1 contemplates that Fidelity by May 15 will transfer to
2 Trump Plaza 25 million dollars in face amount of Trump
3 Plaza Funding bonds which it already now owns in
4 exchange for the 25 million dollar note of the
5 partnership at an interest rate for its first two
6 years lower than that payable on the bonds and with
7 the maturity date slightly earlier than that of the
8 bonds. The note will be secured by mortgage lien on
9 the Trump Plaza parking parcel superior to that of the
10 bonds. The transaction will occur during May and will
11 fully satisfy the 1991 sinking fund obligation.

12 In his testimony Mr. Ribis also
13 indicated that a bond transaction with Fidelity to
14 fully satisfy the 1992 sinking fund obligation which
15 is described in the exhibit, in the agreement as an
16 option will, in fact, be available to Trump Plaza from
17 Fidelity unless there is a total disaster in the
18 world, but that it would be very expensive. Mr. Ribis
19 further stated that he has focused on anticipating
20 this financial responsibility of Trump Plaza, is
21 looking at other opportunities and is investigating
22 all the alternatives.

23 Accordingly, Trump Plaza submits that
24 its evidence clearly and convincingly establishes that
25 it will continue to be financially stable and have

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1 adequate financial resources to operate its casino
2 through 1993, May 16, 1993.

3 The Castle during 1990 in the
4 testimony of Roger Wagner suffered the most from the
5 opening of the Taj Mahal and similarly experienced
6 disruption in its executive management
7 contemporaneously with the opening of that facility 13
8 months ago. New executive management is also now in
9 place at the Castle with Mr. Ribis as the chief
10 executive officer, and Mr. Wagner now serving as its
11 president and chief operating officer. Mr. Wagner too
12 has solidified his on-site senior management team
13 mostly with executives who were already in place
14 there.

15 Unlike Trump Plaza, however, the
16 Castle has adopted a substantial change in its
17 strategy by targeting a new market position and
18 developing a unique market identity and casual,
19 informal theme. Its efforts have now been redirected
20 from its former emphasis on competing for premium
21 players to programs designed to attract those who are
22 currently drive-in patrons of boardwalk casinos. Its
23 spacious and meticulously maintained facility on the
24 15 acre site which overlooks the fully reconstructed
25 600 slips at the Farley Marina will now be fully

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1 marketed.

2 Mr. Wagner, of course, brings us more
3 than 20 years of experience as a casino industry
4 executive in four distinct industry markets to the
5 Castle. As you know, his last eight years have been
6 spent in New Jersey at the Claridge. During his first
7 16 weeks he has reduced the Castle daily operating
8 break even point by 29 percent. He brought the Castle
9 accounts payable to below industry average, and has
10 dramatically reduced the proportion and amount of its
11 promotional allowances while significantly increasing
12 its cash position and exceeding its first quarter
13 forecast as to operating income. The Castle has now
14 eliminated its junket program, established more
15 conservative credit benchmarks and eliminated its
16 transportation facility, print shop and contract
17 laundry services.

18 More specifically, under the
19 direction of Mr. Wagner the Castle has substantially
20 increased the capacity of its buffet, implemented a
21 new showroom policy and undertaken construction of a
22 new lobby lounge.

23 More significantly, its casino is now
24 being reconfigured as depicted in exhibit A-50 to
25 contain 400 new slot machines, 700 new slot stools,

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1 wider aisles and improved sight lines and greater
2 visibility and higher frequency jackpots. Its casino
3 will now offer New Jersey's first Las Vegas style
4 video poker bar. These changes are being carefully
5 implemented so not to impede the company's objective
6 of maximizing its table game revenue. In the words of
7 Mr. Wagner, by Memorial Day the products will be in
8 place and priced and then we start promoting them and
9 putting the gas pedal on and making our impact in the
10 marketplace.

11 In April the Castle sold its Delilah
12 Road fleet maintenance and office warehouse for 1.7
13 million dollars and by May 14 will close on the sale
14 of its Route 30 parking facility for 4.9 million
15 dollars. Its forecast, Mr. Wagner testified, are
16 reasonable and attainable throughout the licensing
17 period. In his words, management is now programmed to
18 flex with the revenues. It's anticipated cash flow
19 from operations will provide adequate financial
20 resources for the payment of its obligations in the
21 operation of its casino.

22 Mr. Ribis, again, gave testimony
23 concerning the sinking fund payments due to Castle
24 funding bondholders during June of 1991 and 1992, and
25 the offering circular which on May 2 was mailed by the

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1 trustee to each series A-1 bondholder. By the
2 circular, which is exhibit A-47C, Castle has offered
3 to exchange 22.7 million dollars in newly issued
4 series A-3 bonds for an identical amount of series A-1
5 bonds which represents 6.9 percent of all outstanding
6 Castle bonds in the precise amount of the sinking fund
7 obligation. The A-3 bonds will have a slightly higher
8 interest rate and a slightly earlier maturity date
9 than those of the A-1 bonds. The exchange will fully
10 satisfy the 1991 sinking fund obligation.

11 The offering circular was prepared in
12 the context of discussions with many of the Castle
13 bondholders and includes terms which some of those
14 bondholders have requested. Mr. Ribis emphasized in
15 his testimony that over 60 million dollars worth of
16 face amount bondholders have indicated their intention
17 and their willingness to participate in the exchange
18 and to tender their bonds. As to the 1992 Castle
19 sinking fund payment Mr. Ribis reiterated that he has
20 focused upon that obligation and is investigating all
21 alternatives which include a similar exchange offer
22 during 1992. He fully expects to satisfy that
23 obligation during the 13 month period which precedes
24 its due date.

25 Accordingly, the Castle submits that

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1 its evidence clearly and convincingly establishes that
2 it will continue to be financially stable and have
3 adequate financial resources to operate its casino
4 through May 16, 1993.

5 CHAIRMAN PERSKIE: Thank you, Mr.
6 Fusco.

7 Commissioners, does any of you have
8 any questions that you wish to present to counsel at
9 this point?

10 Trump Plaza and Trump Castle have
11 applied for the renewal of their casino licenses for a
12 two year period. As was the case in the recently
13 concluded Taj Mahal license renewal hearing, the sole
14 contested issue at the hearing is the financial
15 stability of the licensees.

16 On August 21, 1990, the Commission
17 approved certain agreements relating to a
18 comprehensive debt restructuring of The Trump
19 Organization which, in part, pledged the Trump casino
20 assets to support noncasino debt. The Commission
21 concluded at that time that the restructuring would
22 have a salutary effect on the financial condition of
23 The Trump Organization. However, the Commission
24 recognized that the restructuring was not a panacea
25 for the financial problems that plagued The Trump

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1 Organization in general or the casinos in particular.
2 Accordingly, the license hearings for Trump's three
3 casino properties were reopened.

4 The Commission's reservations have
5 proven to be well-founded as The Trump Organization
6 continued to experience financial difficulties
7 throughout the past year, culminating in the decision
8 to terminate the agreements executed last summer in
9 favor of a new restructuring proposal. The casino
10 properties have been beset by problems of their own as
11 they grapple with their exorbitant debt burdens.

12 On April 18, 1991, the Commission
13 renewed the license for the Taj Mahal subject to
14 further review of the licensee's financial stability.
15 In granting the renewal application, Commission
16 determined that financial restructurings of the Taj
17 Mahal and The Trump Organization were underway which,
18 when and if consummated, could result in a financially
19 stable casino property and a financially stable Trump
20 organization. By the same token, however, the
21 Commission concluded that, absent implementation of
22 the plans, neither the Taj Mahal nor The Trump
23 Organization would be able to establish long-term
24 financial stability. Due to the uncertain status of
25 both plans, the Commission was unable to reach a final

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1 conclusion on the financial stability issue.

2 Of course, The Trump Organization's
3 financial stability is also a requisite for
4 relicensure at the Plaza and the Castle. Obviously,
5 the Commission's previous ruling regarding The Trump
6 Organization is pertinent and applicable in this
7 proceeding. It therefore bears repeating that the
8 precarious financial situation confronting The Trump
9 Organization has not been resolved. Accordingly, any
10 final decision on the overriding issue of financial
11 stability of these licensees must necessarily await
12 the outcome of future events.

13 With that background, I will now
14 address the record presented during last week's
15 hearing and supplemented today.

16 The Plaza has incurred long-term debt
17 totaling approximately 275 million dollars, 28 million
18 dollars of which is due during 1991. The major
19 portion of this debt involves repayments on its 250
20 million dollar principal amount, 12 and seven-eighths
21 percent first mortgage bonds. Interest on these bonds
22 is payable on June 15 and December 15 of each year,
23 and sinking fund payments of 25 million dollars are
24 required annually, commencing June 15, 1991. Thus,
25 Plaza's immediate financial concern is its ability to

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1 make the upcoming 41.1 million dollar principal and
2 interest payment of June 15.

3 Nicholas Ribis, CEO for the Trump
4 casino properties, testified that an agreement has
5 been reached with Fidelity Management and Research
6 Company, a substantial bondholder, which will enable
7 Plaza to satisfy the 25 million dollar bond principal
8 repayment. Pursuant to this agreement, which is
9 expected to be consummated by May 15, 1991, Fidelity
10 will exchange 25 million dollars of the bonds for a 25
11 million dollar note due September 30, 1996. Fidelity
12 will also receive a 1.3 million dollar cash payment on
13 June 15, 1991, representing the accrued interest on
14 the bonds to the date of the exchanges. The bonds
15 would then be tendered in lieu of the sinking fund
16 payment. The new note would be secured primarily by a
17 mortgage on Plaza's parking facility. Interest on
18 this new note will be payable monthly commencing June
19 15, 1991, at 11 percent during the first year, 12
20 percent during the second year and 12 and
21 seven-eighths percent thereafter. If the June 1992
22 payment is not otherwise satisfied, Fidelity will have
23 the option to make a similar exchange in 1992. If
24 executed, this second agreement would enable Plaza to
25 satisfy its sinking fund requirement for 1992. This

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1 second note would be secured by a lien on the casino
2 hotel junior to the lien on the bond indenture. If
3 Fidelity engages in this second transaction, it would
4 also receive a 4.95 percent equity interest in the
5 Plaza.

6 Although there is currently no
7 commitment from Fidelity for the 1992 proposal, Ribis
8 expressed confidence based on his ongoing negotiations
9 that, absent some unusual occurrence, Fidelity would
10 agree to the transaction. He further stated that if a
11 second deal cannot be achieved, Plaza could utilize
12 other alternatives to generate the needed funds, such
13 as a refinancing, an exchange offering, or the
14 reinstitution of credit facility.

15 Plaza concedes that without that,
16 without this exchange agreement, it would not have
17 sufficient funds to satisfy its debt service. Plaza's
18 independent accountant, Arthur Andersen & Company,
19 issued a recent report concluding that, without a debt
20 restructuring, it was unlikely that Plaza could
21 produce sufficient cash to meet its debt obligations.
22 Clearly, if the contemplated agreement with Fidelity
23 is not implemented, Plaza will default on the bonds on
24 June 15. There is no grace period for making this
25 payment. The record demonstrates, however, that a

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1 firm agreement has been reached for 1991 and that it
2 is reasonably likely that a subsequent agreement
3 covering 1992 will be similarly achieved.

4 Apart from the sinking fund
5 obligation, Plaza still faces a 16 million dollar
6 interest payment on June 15. Kevin DeSanctis,
7 recently appointed president and chief operating
8 officer of the Plaza, testified that Plaza currently
9 has an available cash balance of approximately 14
10 million dollars, including four million dollars in
11 in-house funds. He anticipates that that, based on
12 recent operating results, Plaza will generate
13 sufficient cash flow to satisfy this interest
14 payment. Management's financial projections indicate
15 that Plaza will be able to make this and other
16 interest payments as they come due during the license
17 period. The report of the Commission staff, admitted
18 into evidence, opines that the assumptions underlying
19 these forecasts are reasonable and that the predicated
20 operational performances may be attained. The report
21 concludes that, if the exchange agreement is executed
22 and the forecasts are realized, Plaza would satisfy
23 the Act's requirement of financial stability.
24 Significantly, recent operating results have exceeded
25 forecasts.

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1 From an operational standpoint,
2 DeSanctis stated that he did not expect many changes
3 in key management positions, which should bring needed
4 stability to the facility. He added the changes were
5 being made to enhance casino performance, such as
6 elimination of unprofitable aspects of operations and
7 making a more concerted effort to attract preferred
8 customers.

9 Thus, it appears that Plaza is on a
10 course to satisfy its monetary obligations. A
11 workable plan has been devised which, if implemented,
12 should bring Plaza financial stability. However,
13 since Plaza presently does not have any available
14 external financing, its ability to make the required
15 interest payments depends entirely upon operating
16 performance. The viability of Plaza's plan for
17 stability through the license period is still,
18 therefore, in question, particularly since there is
19 little room for any material variance between actual
20 and forecasted results. If Plaza's stability is
21 reconsidered at the June 17 hearing, the Commission
22 will at that time not only know if the June 15
23 principal and interest payments have been made, but
24 will also be able to examine additional operating
25 results to determine the viability of the licensee's

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1 projections.

2 Turning to the Castle, that licensee
3 is also faced with a substantial debt burden and an
4 extreme liquidity problem. Based on recent
5 performance levels, its prospects are somewhat less
6 promising than those of the Plaza. Management is
7 considering various alternatives to solve its
8 liquidity problem, including a restructuring of the
9 indebtedness and a sale of certain ancillary
10 properties and facilities. Until such a restructuring
11 is completed, Castle can rely only on cash generated
12 from operations to service its debt and provide for
13 its anticipated capital requirements. Castle
14 acknowledges that, if current levels of operations
15 continue, and no restructuring is effected, funds
16 generated from operations will not be sufficient to
17 cover its debt service requirements.

18 Castle has a long-term debt balance
19 of approximately 366 million dollars, including
20 roughly 204 million dollars principal amount of 13.75
21 percent first mortgage bonds. Its most immediate
22 financial concern is the ability to pay a 22.7 million
23 dollar sinking fund payment on the mortgage bonds due
24 June 15, 1991, together with an interest payment of
25 18.4 million dollars.

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1 Ribis testified that, with respect to
2 the sinking fund payment, Castle is offering to
3 exchange 22.7 million dollars of its first mortgage
4 bonds for new bonds of a similar amount. Consummation
5 of this exchange offer which expires on June 15, 1991
6 would enable Castle to make this payment. The new
7 bonds would bear interest at 13.875 percent and mature
8 in 1996. Castle anticipates a similar transaction in
9 1992 to satisfy that year's requirement. Ribis stated
10 that he has assurances from the holders of 20 percent
11 of the outstanding bonds that they will participate in
12 this offering. Counsel for the Putnam Companies, a
13 member of the Steering Committee representing the
14 holders of approximately 33 percent of the bonds,
15 maintained that no commitment had been given or made
16 from that large block. It is indisputable that
17 implementation of this exchange offer or a
18 restructuring of similar nature is essential for
19 establishing financial stability. It is equally
20 clear, however, that, without firm commitment from the
21 bondholders, it is premature to assess the likelihood
22 of the success for any such offering.

23 Moreover, despite the potential
24 benefits of the exchange offer, Castle is still
25 required to fund interest payments of approximately

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1 36.8 million dollars and 36.9 million dollars for 1991
2 and 1992, respectively. Castle anticipates that these
3 obligations will be satisfied using cash generated
4 from operations coupled with approximately seven
5 million dollars in proceeds from the sale of two
6 parking facilities to the Taj Mahal. The sale of one
7 of the parking facilities occurred on April 19, 1991,
8 and the sale of the second facility is expected to
9 occur later this month. Currently, Castle has
10 available cash reserves of 15 million dollars, without
11 considering the 4.9 million dollars received from the
12 recently concluded parking lot transaction.

13 Castle's financial forecasts indicate
14 that it will have approximately 22 million dollars in
15 available cash reserves on June 15, which would
16 clearly be enough to fund the 18.4 million dollar
17 interest payment of that date. Castle also expects
18 its cash reserve to be at the seven million dollar
19 level by the end of June, which would allow it to make
20 its required slot fee payment. However, in evaluating
21 the reasonableness of these projections, we must take
22 into account Castle's recent performance record and
23 the fact that it had to resort to external financial
24 resources in order to fund last year's debt interest
25 obligations.

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1 Castle was unable to make the
2 required sinking fund payment or interest payments on
3 the mortgage bonds by the due date of June 15, 1990.
4 However, Castle was able to make the required payments
5 before expiration of the 10 day grace period by
6 borrowing the necessary funds from Trump coupled with
7 its own open market bond purchases. Castle also
8 experienced difficulty funding its December 1990 bond
9 interest payments, and again had to resort to
10 financing from the Trump family. In addition, Castle
11 has failed to make certain required interest payments
12 to MidLantic National Bank on a construction loan and
13 credit line. MidLantic has agreed to defer payment of
14 accrued and unpaid 1990 construction loan and credit
15 line interest.

16 Roger Wagner, president and CEO of
17 the Castle, who has considerable casino management
18 experience and a proven track record for controlling
19 costs and expenses, joined the Castle in January and
20 immediately began to implement significant changes to
21 increase profitability. Since his arrival, the Castle
22 has exceeded its forecasts in operating income.
23 Wagner testified that his program for enhancing
24 operating results includes a streamlined management
25 team, a reduction in operating expenses, a major shift

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1 in marketing strategy, and a reconfigured casino floor
2 designed to optimize revenue. He testified that this
3 comprehensive operational and marketing program should
4 significantly increase revenue and reduce expenses,
5 allowing Castle to meet its forecasts and ensuring a
6 financially viable facility.

7 The record indicates that Wagner has
8 succeeded in eliminating over 200 middle management
9 positions without impairing the property's ability to
10 function effectively. In addition, certain costly
11 expenditures which have not been revenue enhancing,
12 such as the transportation facility, junkets, print
13 shop and laundry contracting, have been eliminated. A
14 significant aspect of Wagner's program is a dramatic
15 revision in promoting and marketing the facility in an
16 effort to carve out its own niche in the casino
17 marketplace. Finally, the casino floor will be
18 altered by Memorial Day, with 400 new slot machines,
19 700 slot stools, a slot poker area and wider aisles,
20 all of which should help increase slot revenue.

21 The Castle's situation is similar to
22 the Plaza insofar as it will have to rely upon funds
23 generated from operations in the absence of any
24 available external financing. Castle has yet to
25 demonstrate its ability to achieve the forecasted

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1 increases in earnings necessary to meet its 1991 and
2 1992 debt service requirements. As in the case of the
3 Plaza, the viability of Castle's plan to satisfy its
4 debt service requirements cannot be finally assessed
5 at this point.

6 Both the Plaza and the Castle
7 suffered through disappointing years in 1990 as the
8 economic recession affecting the northeast corridor of
9 the United States and last spring's opening of the Taj
10 Mahal resulted in declining revenues and decreased
11 profits. Their plight was compounded by the well
12 documented tribulations of The Trump Organization.
13 Saddled with substantial debt burdens and no longer
14 able to rely on the resources of The Trump
15 Organization, these entities certainly face a
16 difficult task as they seek to recapture their
17 predominant positions in this competitive
18 marketplace. There can be no doubt that, unless their
19 respective debt service requirements are restructured
20 and operating performances are significantly enhanced,
21 their continuing financial viability is in serious
22 peril.

23 Despite these concerns, I am
24 satisfied that, similar to the situation that existed
25 with respect to the Taj Mahal, there has been an

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1 adequate showing here of short-term stability for each
2 of the licensees. Indeed, the record persuasively
3 demonstrates that both properties are generating
4 sufficient operating income and can reasonably be
5 expected to continue to satisfy all current
6 obligations, including taxes, payroll, vendor accounts
7 and patron expenses. Their fundamental problems
8 derive primarily from their substantial debt burdens.
9 Both entities have devised plans that deal effectively
10 with these debt service requirements, which if
11 implemented, may provide the necessary financial
12 stability through the license period. I also derive a
13 considerable degree of comfort from the conduct of the
14 creditors in withholding action in enforcing their
15 legal claims against these debtors. In addition,
16 there has been no suggestion that any unlicensed or
17 unlicensable interests have attempted to take
18 advantage of their uncertain financial status or to
19 take any action which would threaten the public
20 interest in the integrity of the entities, their
21 operations or their structures. Considering all of
22 these factors, the public interest would be protected
23 if licensure were now to be continued for a short
24 period and under strict scrutiny and supervision.

25 As I have indicated, it will be

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1 necessary to reconvene on June 17 to continue the
2 examination of the financial status of The Trump
3 Organization and the Taj Mahal. I believe that the
4 financial stability issue with respect to these
5 licensees should be consolidated with that
6 proceeding. At that time, we will have a much clearer
7 picture of the viability of the proposed
8 restructurings and the ability of each of the
9 licensees to make the requisite debt payments. During
10 the interim period, of course, the Commission and the
11 Division will closely monitor the progress of each of
12 the licensees.

13 There being no disputed issues before
14 the Commission other than that of financial stability,
15 and concluding that each of the licensees has
16 established by clear and convincing evidence all other
17 elements of the proofs necessary for relicensure, I
18 move that the Commission renew the casino license of
19 Trump Plaza effective May 16, 1991, subject to all of
20 the conditions set forth in the staff reports in
21 evidence and further subject to consolidating the
22 hearing on the subject of financial stability with the
23 hearing scheduled for June 17, 1991, regarding the Taj
24 Mahal and The Trump Organization. Of key significance
25 are the following conditions recommended in the report

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of Division of Financial Evaluation:

1. On a weekly basis, a report detailing Plaza's cash balance and progress toward making its 16.1 million dollar interest payment due June 15, 1991 is to be provided to the Commission and to the Division.

2. Within 15 calendar days of the end of each month, the Plaza shall submit monthly balance sheets, statements of income, and statements of cash flows to the Commission and to the Division.

3. Within 15 calendar days at the end of each month, the Plaza shall advise the Commission and the Division of any significant deviation from the financial forecasts submitted in connection with this license hearing as well as to disclose the specific variances and management's analysis of the factors contributing to any such variances. Significant deviations shall be determined on a monthly and year to date basis based on the following criteria:

a. A five percent or greater variance between actual and forecasted net revenues.

b. A five percent or greater variance between actual and forecasted operating costs and expenses.

c. A 2.5 percent or greater variance

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1 between actual and forecasted net income.

2 d. Any variance between actual and
3 forecasted sources and uses of cash.

4 Relicensure shall also be subject to
5 the condition suggested by the Division of Gaming
6 Enforcement, that the Plaza is to make every
7 reasonable effort to procure a credit line and an
8 available ongoing credit line and is to report to the
9 Commission and to the Division on a weekly basis
10 between now and June 17 on its efforts and discussions
11 in that regard. That report I suggest can be in the
12 same form and submitted on the same schedule as the
13 other report that Mr. Bollenbach is required to submit
14 with respect to the Taj Mahal.

15 In addition, relicensure shall be
16 subject to all of the conditions imposed August 21,
17 1990, in connection with the Commission's approval of
18 the Credit and Override Agreements, with the exception
19 of paragraph 1 (b) in Resolution No. 90-233 which is
20 to be superceded by the following condition:

21 Any payment from the licensee to any related
22 entity, or any partner or shareholder of the
23 licensee shall be subject to prior Commission
24 approval with the exception of the following:
25 (1) payments pursuant to a tax allocation

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1 agreement; (2) payments to satisfy or maintain
2 a debt service obligation, the structure of
3 which has been expressly approved by the
4 Commission; (3) payments representing the
5 licensee's proportionate share of group
6 insurance premiums; (4) payments for fair and
7 adequate consideration for services rendered or
8 property purchased or leased by or to casino
9 service industries or junket enterprises or
10 applicants for such licenses; and (5) any
11 individual payment in the ordinary course of
12 business less than \$100,000 and any such
13 cumulative payments not exceeding \$500,000
14 in any calendar year.

15 Written notice of any payment which
16 is exempt from prior approval pursuant to one of the
17 five exceptions set forth in this condition shall be
18 provided to the Commission and to the Division within
19 five days of any such payment.

20 So moved.

21 COMMISSIONER WATERS: Second.

22 CHAIRMAN PERSKIE: Comment or
23 discussion?

24 On the motion all in favor will so
25 indicate--or I think in this instance we will call

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1 again for a roll call.

2 Commissioner Dodd?

3 COMMISSIONER DODD: Aye.

4 CHAIRMAN PERSKIE: Vice Chair

5 Armstrong?

6 VICE CHAIR ARMSTRONG: Yes.

7 CHAIRMAN PERSKIE: Commissioner

8 Hurley?

9 COMMISSIONER HURLEY: Yes.

10 CHAIRMAN PERSKIE: Commissioner

11 Waters?

12 COMMISSIONER WATERS: Yes.

13 CHAIRMAN PERSKIE: And I vote yes.

14 The record will reflect that the vote
15 is unanimous.

16 (All Commissioners present voted in
17 favor of the motion)

18 CHAIRMAN PERSKIE: I would further
19 move the Commission renew the casino license of Trump
20 Castle Associates effective May 16, 1991 subject to
21 all the conditions set forth in the staff reports
22 submitted into evidence and otherwise here or now
23 imposed in the previous resolution on the Plaza, and
24 further subject on the condition that, on a weekly
25 basis, the bond indenture trustee shall submit a

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1 report to the Commission and to the Division with
2 respect to the progress of the Castle's exchange
3 offer. Likewise, Mr. Fusco, that report from the bond
4 indenture trustee should be filed by noon or by 10:00
5 whatever we had previously said on Tuesday of each
6 week.

7 So moved.

8 COMMISSIONER HURLEY: Second.

9 CHAIRMAN PERSKIE: Comment or
10 discussion?

11 VICE CHAIR ARMSTRONG: Mr. Chairman,
12 yes, I support the motion, but I have two brief
13 comments I want to make.

14 The first one is that I just feel a
15 need at this point to say in connection with the
16 Castle renewal that I am less than enamored with the
17 transaction which occurred between Fred Trump and
18 Castle in connection with the December 1990 bond
19 interest payment, but in the interest of not
20 prejudging at this point in time and recognizing that
21 we will be addressing that incident in more detail,
22 probably within the next several weeks at one of our
23 regular public meetings, I will withhold further
24 comment until it's squarely in front of us, but
25 suffice it to say and I feel I should indicate that

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1 incident considered in the context of the delicate and
2 precarious financial condition the Castle is in is a
3 matter of considerable concern to me and I will have
4 more to say at a later point in time about that.

5 The second comment I just want to
6 make is that I do fully appreciate the business
7 realities of the need for adequate time to unravel and
8 restructure any complex financial problems and in
9 particular those which are confronting all of the
10 various Trump entities. However, I also respect the
11 reality of the words of the Casino Control Act which
12 require our casino licensees to possess financial
13 stability. In connection with both the renewal of
14 Plaza and the Castle it seems to me that a balancing
15 of the business realities with the regulatory
16 realities give me some comfort in agreeing that
17 additional time to resolve the financial matters
18 confronting these entities is appropriate and will not
19 do an injustice either to the public or to the intent
20 of the Casino Control Act. However, the whole point
21 of these comments is something that I mentioned in the
22 Taj Mahal renewal hearing and I wish to reemphasize
23 here that for me June 17 is a real date and I am very
24 serious about that speaking as one Commissioner.

25 CHAIRMAN PERSKIE: Anybody else have

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1 any comments on the motion?

2 Commissioner Dodd?

3 COMMISSIONER DODD: Aye.

4 CHAIRMAN PERSKIE: Vice Chair

5 Armstrong?

6 VICE CHAIR ARMSTRONG: Yes.

7 CHAIRMAN PERSKIE: Commissioner

8 Hurley?

9 COMMISSIONER HURLEY: Aye.

10 CHAIRMAN PERSKIE: Commissioner

11 Waters?

12 COMMISSIONER WATERS: Yes.

13 CHAIRMAN PERSKIE: And I vote yes.

14 The record will reflect that the vote
15 is unanimous.

16 (All Commissioners present voted in
17 favor of the motion)

18 CHAIRMAN PERSKIE: There are two
19 supplemental matters to be addressed. First, approval
20 of the Castle's sale of the two parking facilities to
21 the Taj Mahal. These transactions must be approved by
22 the Commission pursuant to the condition imposed at
23 the time of relicensure of the Taj Mahal and similarly
24 imposed on them now with respect to the Castle, Castle
25 and the Plaza.

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1 Mr. Auriemma, does the Division have
2 any objection to approving these agreement?

3 MR. AURIEMMA: No, we don't.

4 CHAIRMAN PERSKIE: I would move that
5 the Commission approve the Castle sale to the Taj
6 Mahal of the two parking facilities.

7 COMMISSIONER DODD: Second.

8 CHAIRMAN PERSKIE: Any comment or
9 discussion?

10 On the motion all in favor will so
11 indicate.

12 The record will reflect the motion
13 carries unanimously.

14 (All Commissioners present voted in
15 favor of the motion)

16 CHAIRMAN PERSKIE: It is my
17 understanding that the Taj wishes to move to have its
18 license condition amended to reflect the same terms
19 that we imposed today on the upstreaming.

20 MR. FUSCO: Yes, Mr. Chairman.

21 CHAIRMAN PERSKIE: No objection to
22 that, Mr. Auriemma?

23 MR. AURIEMMA: No.

24 CHAIRMAN PERSKIE: Anybody on the
25 Commission have any comment?

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1 I would move that the Taj Mahal
2 license resolution of April 18 be amended so that the
3 languages of the condition on the transfers be amended
4 so as to reflect the same language we have today
5 imposed on the Plaza and Castle.

6 COMMISSIONER DODD: Second.

7 CHAIRMAN PERSKIE: Any question?

8 COMMISSIONER DODD: That's a good
9 problem when and if it comes.

10 CHAIRMAN PERSKIE: All in favor will
11 so indicate.

12 The record will reflect that that
13 motion likewise carries unanimously.

14 (All Commissioners present voted in
15 favor of the motion)

16 CHAIRMAN PERSKIE: Is there anything
17 else before us this afternoon?

18 COMMISSIONER DODD: Public comment.

19 CHAIRMAN PERSKIE: On this matter.

20 MR. FUSCO: The alcoholic beverage
21 license, Mr. Chairman, I don't know if that was
22 included.

23 MR. ZIMMERMAN: It's included within
24 the staff report so we don't normally include it
25 within the motion.

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1 CHAIRMAN PERSKIE: It was the
2 intention and understanding and is the understanding
3 of the Commission that the resolutions just approved
4 encompass all of the CHAB and other associated
5 permissions and license so that alcohol can be served
6 through the 17th.

7 MR. ZIMMERMAN: That will all be
8 reflected in the final resolution.

9 CHAIRMAN PERSKIE: And even perhaps
10 this afternoon.

11 Anything further on this matter?

12 All right, thank you very much.

13 CHAIRMAN PERSKIE: We have 15.

14 MS. BIACHE: Application of Joseph
15 Buck.

16 CHAIRMAN PERSKIE: All right, this is
17 agenda Item No. 15.

18 Mr. Bennington, is Mr. Buck present?

19 MR. BENNINGTON: Yes, he is.

20 CHAIRMAN PERSKIE: Mr. Fusco, this is
21 your matter?

22 MR. FUSCO: It's my matter but as I
23 prevailed it would seem to me it's now Mr.
24 Bennington's matter.

25 CHAIRMAN PERSKIE: I understand that,

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1 but you are entering an appearance.

2 MR. FUSCO: Yes. This is one of the
3 five consecutive matters that I was going to present
4 to you.

5 MR. BENNINGTON: Mr. Fusco is getting
6 tough in his old age.

7 CHAIRMAN PERSKIE: Mr. Bennington, we
8 have the material before us including the exceptions
9 that the Commission is prepared to consider on a
10 constructive basis were filed in accordance with the
11 provisions of the Administrative Procedures Act.

12 MR. BENNINGTON: Mr. Chairman,
13 members of the Commission, obviously after such a
14 serious matter that you just heard I would like to try
15 and get you back down to a level to Mr. Buck, although
16 it certainly doesn't rise to the level of the
17 magnitude of relicensing two properties, it certainly
18 is to him one of the biggest decisions in his life.

19 CHAIRMAN PERSKIE: I appreciate the
20 disclaimer, Mr. Bennington, but in view of the fact
21 you made it I must indicate as far as the Commission
22 is concerned there is no level of distinction in
23 focusing our attention between a corporate licensure
24 and an individual suspension or anything in between.

25 MR. BENNINGTON: Very well, and I

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1 have certainly represented that to Mr. Buck.

2 Mr. Chairman, the situation at bar,
3 the initial decision unfortunately, and I have said
4 this numerous times, doesn't allow a lot of times for
5 the Commission to get a flavor of a person's
6 individual character and a person's individual
7 testimony and unfortunately that's the way the system
8 is presently set up, although I know recently the
9 Chairman, as well as the Commission is trying to take
10 a more active role in terms of these individual
11 licensing hearings which we certainly as one who
12 represents predominantly individual licensees or
13 applicants, we certainly welcome that because I think
14 unfortunately my opinion by way of editorializing is
15 that the administrative law process at least in recent
16 years, and I have been doing this since the advent of
17 the Act, has become nothing more than a rubber stamp
18 for the wishes of the Division of Gaming Enforcement
19 and I say that respectfully. With respect to--meaning
20 with no disrespect to the administrative laws judges
21 that are hearing these cases.

22 The case at bar, you have a
23 situation, for example, where I am not asking this
24 gentleman to take over as CEO of a large casino. I am
25 asking him to be a slot mechanic at a casino where I

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1 produced five character witnesses, each one of whom I
2 might add was a casino key licensee, one of whom was a
3 former captain of the New Jersey State Police who
4 testified candidly, this would be captain Ertle, now
5 he is an individual, I should use his correct title.
6 He is working head of security at the facility where
7 Mr. Buck was promised employment who came forward and
8 said basically I have never offered testimony, good
9 character testimony on behalf of anybody and I have
10 known this fellow and I think there is absolutely no
11 threat to the industry, no less to the operation that
12 I am going to be overseeing. For whatever reason the
13 Administrative Law Judge summarily disposed of my
14 character witnesses by representing that they were all
15 good, without getting into highlighting what exactly
16 these individual people said.

17 I would point out that as Mr. Buck is
18 before you as he was at the time of this
19 administrative law hearing, he has not been convicted
20 of any offense, as a matter of fact, the offenses for
21 which he was charged one of which he ultimately
22 received disposition by way of a satisfactory
23 completion of admission into the pretrial intervention
24 program, as well as another arrest that was disposed
25 of by way of a not guilty or dismissal of the charges,

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1 Mr. Buck is not convicted, does not stand before you
2 as a convicted person, as a matter of fact, has
3 received an expungement from even those records of
4 arrest.

5 So you have someone who is not forced
6 with or faced with the liability attendant to a
7 criminal conviction. Notwithstanding that I recognize
8 that the Act provides, as the Division has maintained,
9 that there still can be unprosecuted conduct and as a
10 result they are arguing that he lacks the requisite
11 good character, honesty and integrity. Also
12 noteworthy is the fact that this is not a
13 nondisclosure case. Mr. Buck clearly and candidly
14 indicated all these arrests on his application and
15 came forward to offer testimony.

16 Apparently the Administrative Law
17 Judge in this case felt that Mr. Buck was less than
18 truthful, although he didn't use those words, but if
19 you read the decision that was basically what he said,
20 because it seemed like, to paraphrase, that he was
21 pulling teeth or I was pulling teeth in my direct
22 examination of Mr. Buck as was Mr. Fusco on
23 cross-examination. I can't fathom how he reaches that
24 conclusion when the fellow not only put it down on his
25 application, but he also comes in and admits it under

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1 oath that he did all the things that he said.
2 Unfortunately, some applicants, some petitioners, are
3 better or more articulate, I should say, than others.
4 Mr. Buck, as might be expected due to his age or
5 inexperience, was having a difficult time I think in
6 admitting his crime or admitting his wrongs and coming
7 forward, and during the course of the testimony,
8 although the truth inevitably came out, as the judge
9 indicated, he felt we finally reached a point in the
10 proceedings so it wasn't as if Mr. Buck got up there
11 and denied these things happened, but as might be
12 expected in a situation such as this, Mr. Buck was
13 nervous, he was embarrassed, he had all his character
14 witnesses sitting there and to get up there and effect
15 a mea culpa in all of your friends and people standing
16 up on your behalf, no less your new wife, was a
17 difficult proposition I would submit for anybody to go
18 through, no less Joe Buck.

19 To make a long story short, it seems
20 to me that the case at bar I am asking you to look
21 beyond what it is that he was charged with and
22 recognize that these acts occurred a few years ago,
23 that there has been absolutely no contact with the
24 law. Mr. Buck at the very least has rehabilitated
25 himself I would think in the past two or three years,

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1 and I think Mr. Fusco would agree that perhaps if Mr.
2 Buck had waited a year or two more and more time had
3 passed that perhaps the Division would not have
4 entered an objection or recommended an objection to
5 licensure.

6 Be that as it may, independent of any
7 counsel that he may have received, he sought to make
8 an application and your affirmation of the decision
9 below here would certainly preclude him from filing
10 from five years hence albeit he also has the
11 opportunity to make an application for early or a
12 petition for early reapplication which he chooses not
13 to do.

14 I recognize that the posture of the
15 Commission has been lately that it seems to be an all
16 or nothing situation, and I will be back in a few
17 weeks with a few more cases that I lost I might add in
18 front of the administrative law courts and I will
19 candidly tell you I am going to make the same argument
20 then.

21 As one who deals with these people on
22 a routine basis all the time, it seems to me that
23 perhaps somewhere along the way you could formulate
24 some happy ground in between, some compromise in terms
25 of punishment for these people. I'm not here to ask

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1 forgiveness for the fact that Joe Buck while a
2 corrections officer took money from an inmate, that he
3 possessed drugs while in that capacity. I can point
4 out as bad as that may sound on its face the county
5 prosecutor decided not to prosecute him in that regard
6 and was satisfied with a resignation, an involuntary
7 or I should say a nonfavorable resignation of his
8 position. But I would say that we all make mistakes
9 when we are young, we all do things that are wrong, we
10 all need time as you heard from other applicants this
11 morning, some of whom were unrepresented, for a period
12 of forgiveness. I think if the Commission somehow or
13 another could fashion penalties to meet the wrong
14 perhaps a probationary period or perhaps a time of
15 fine--

16 CHAIRMAN PERSKIE: Mr. Bennington,
17 let me just suggest to you in a rhetorical fashion,
18 because we have heard this from others and I know we
19 will hear it again from you, I suggest the argument
20 ought properly be made to the legislature. We have
21 not been assigned by the legislature the authority or
22 the responsibility to punish. We don't sanction
23 people in the context that is for punishment of other
24 than provisions of the Casino Control Act. It's not
25 our job. Whether what he went through with the

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1 criminal process is or is not adequate punishment is
2 not for us to decide. Our focus is to decide
3 licensure questions in which in this context turn on
4 issues of integrity and honesty and good character.
5 The thrust that you are suggesting, and as I said you
6 are not the only one that does, is I think more
7 properly addressed to a different legislative thrust
8 than the one they have given.

9 MR. BENNINGTON: Clearly I think the
10 Act would empower you as the Commission to set up or
11 establish--you could, for example, if, in fact, he was
12 a licensee and not just a petitioner to be a licensee,
13 you could, for example, in my estimation, maybe I am
14 wrong, you could suspend the license, you could impose
15 some monetary penalty or some other sanctions, but I
16 haven't seen that. Maybe I am wrong. I haven't seen
17 that. If at all it has been on a very rare occasion.

18 CHAIRMAN PERSKIE: Because the answer
19 is if you don't have good character, you don't have
20 \$100 worth, you don't lack \$100 worth or you don't
21 lack \$500 worth.

22 MR. BENNINGTON: You and I have gone
23 round and round in other forums with respect to
24 whether or not you can have sort of good character or
25 a little bit of good character or a lot of good

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1 character. I disagree. I think that people exhibit
2 bad character in some instances, lawyers alike, and
3 they exhibit excellent character in other instances,
4 and I think things can't be that cut and dry in life.
5 Maybe I am wrong but I just don't see things that
6 black and white. I see certain instances where people
7 clearly should not be allowed in the industry because
8 of the fact that their conduct would be inimical to
9 the policies of the Act. I do see other mistakes
10 where people have admitted wrong and I think you might
11 if you looked at it in a vacuum exemplify or deal with
12 or represent complete bad character, but I don't think
13 that a person should be punished for the length of
14 time that the Act provides that they are punished
15 for.

16 Be that as it may, it's really not
17 something, I think it's a remedy at hand here because
18 we are asking for a first license. So it's not a
19 question that he is already licensed and you can do
20 something with him. You have to focus on what it is
21 the judge said and he said he felt the guy lacked good
22 character, honesty and integrity merely from the
23 perspective that he didn't like the way he testified.
24 He felt the eventually we got to the truth and we got
25 to the very bottom of it but it was like pulling

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1 teeth. Well, you can't punish the applicant for
2 either the lawyer's inability to draw out the
3 testimony as proficiently as he maybe should have.
4 Punish me. But you certainly can't punish the
5 applicant in the sense that he was honest. It wasn't
6 as if he denied any of the acts. Again, when you
7 focus on the position that he is looking for, he is
8 trying to be a slot mechanic. He is trying to make a
9 living. His wife is a casino pitboss in another
10 place. He has brought in not only his wife to testify
11 as to his good character, he brought in other casino
12 key employees and, most importantly, he brought in the
13 guy that's the head of security for the facility where
14 he wants to work who is a former state policeman, the
15 captain standing up there saying I don't have any
16 problem with this guy working, A, in the industry or,
17 B, in a particular facility that I am in charge of
18 monitoring from a security standpoint.

19 That having been said, legally you
20 certainly are empowered to disregard the position of
21 the Administrative Law Judge, and I recognize that
22 it's a difficult burden, but I would also ask and I
23 would say this again respectively, the Commission of
24 recent in my estimation on behalf of Mr. Buck has
25 taken such a strict and tough perspective as to some

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1 of these individual applicants, today I watched one
2 after the other and I say this, I recognize some
3 decisions were there when the Administrative Law Judge
4 recommended licensure, some where they didn't
5 recommend licensure and the Commission has taken a
6 relatively intolerable point of view that if people do
7 something wrong whatsoever that they are not going to
8 be licensed and I would ask that in this particular
9 case, if not in general, that the Commission start
10 taking a more reasonable and human approach, perhaps a
11 better word would be more compassionate approach.
12 This is a difficult industry to get a job let alone
13 anywhere today. If these people can find employment
14 and the particular casino is willing to hire them and
15 you can produce witnesses from that casino that are
16 saying that they don't represent a threat, I find it a
17 difficult concept to follow that the regulatory body
18 in charge of giving them a license is going to come
19 along and say that you are not worthy of licensure
20 because you represent a threat to the industry.

21 That having been said, there are no
22 real legal arguments that I can proffer at this time
23 because the legal arguments are what they are. He
24 did, in fact, do the acts that were alleged. He
25 admitted them. He is not convicted of any crime. He

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1 stands here an unconvicted man. He stands here a
2 young man having admitted a mistake. All the acts
3 occurred more than a few years ago. He has attempted
4 to introduce character testimony that would be
5 favorable to him. For whatever reason this particular
6 law judge didn't accept it. Perhaps another
7 Administrative Law Judge would be more compassionate
8 or more liberal as would relate to individual casino
9 applicants would have accepted it. It didn't happen
10 that way.

11 So in that regard I would ask that
12 the Commission show some compassion, recognize the
13 position that we are applying for, look to the people
14 that testified on this fellow's--as to this fellow's
15 good character and quite simply cut him a break and
16 allow him the opportunity to work in the industry as
17 he was trying to do and he wants to do. I would think
18 that that would be in the interest of justice and he
19 certainly doesn't represent a threat to the industry
20 as a slot mechanic by virtue of what he did some two
21 or three years ago.

22 Thank you very much.

23 CHAIRMAN PERSKIE: Thank you, Mr.
24 Bennington.

25 Mr. Fusco.

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1 MR. FUSCO: Mr. Chairman, this is a
2 very difficult act to follow. It's very tough to get
3 up here and say anything bad about Mr. Buck after
4 listening to Mr. Bennington.

5 However, I just want to remind the
6 Commission that the OAL doesn't always rubber stamp
7 the cases that the Division presents to them and Mr.
8 Bennington should know better than anyone the last
9 time--

10 CHAIRMAN PERSKIE: Because he won a
11 few of them.

12 MR. FUSCO: The last time I was up
13 here with him was Christina Paul, I think was one of
14 the very first cases you sat on, and we had the
15 situation exactly reversed.

16 If there had been a jury present I
17 would have been up yelling a little while ago. There
18 is one thing I would like to address and that was the
19 comments that Mr. Bennington made regarding
20 expungement. In his exceptions he indicated that the
21 petitioner is presently awaiting the expungement of
22 the various criminal charges that have been originally
23 lodged against him. First of all, I don't think
24 that's relevant to any decision that you have to make
25 here today, but then, secondly, he said in his

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1 comments to you that these charges were expunged. I
2 don't know how Mr. Bennington was able to do that
3 because if my understanding is correct in Title 52 if
4 there is presently pending a civil action before any
5 agency in the state you are not eligible to have an
6 expungement of the charges. Nevertheless, Mr.
7 Bennington has worked miracles before, perhaps that's
8 one of them that he was able to accomplish with regard
9 to the actual criminal charges that had been lodged in
10 two separate instances.

11 Let me discuss the facts of this case
12 very briefly because I am sure each one of you had an
13 opportunity to read the initial decision.

14 I think Mr. Bennington hit the nail
15 on the head when he says I said and the judge said it
16 was like pulling teeth to get the truth out of Mr.
17 Buck with regard to what happened back in 1987. Mr.
18 Buck was employed as a prison guard. I suggest to you
19 that he is held to a very high level of trust in such
20 a position. His initial testimony at the hearing is
21 that one of the prisoners wanted him to bring
22 something into the prison. So what's the next logical
23 question? What do you want me to bring in? We got
24 detergent as an answer. Well, we can bring in
25 detergent, we can bring in cigarettes, and I was

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1 dumbfounded, I mean we wouldn't be here today if he
2 was going to be bringing detergent in. That's not
3 what this place was all about because when you look at
4 the agreement or forego prosecution that's how he
5 ended up losing his job, he had an agreement to forego
6 prosecution and what that agreement talked about was,
7 and this is marked into evidence, his official
8 misconduct related to the possession and possession
9 with intent to distribute a controlled dangerous
10 substance. I have never known Fab or Tide or any of
11 those others to be a controlled dangerous substance,
12 but this is what Mr. Buck testified to.

13 It wasn't until 40 minutes or maybe
14 an hour later that we eventually got the truth out of
15 Mr. Buck. Well, yes, there may have been some
16 discussion about cocaine because I had cocaine in my
17 pocket or what I believed was cocaine from the night
18 before. This man being held to a very high standard
19 was very simply on the take. That's what this case is
20 all about. For whatever reason the prison officials
21 didn't want to prosecute him. They let him resign.
22 You would think that at this point Mr. Buck would have
23 learned his lesson, that he would have turned over a
24 new leaf, but that's not what happened.

25 A little over a year later now he is

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1 involved in an automobile accident where he leaves the
2 scene of the accident and he has cocaine and marijuana
3 in his possession and he got PTI and as a result the
4 charges were dismissed. However, in the exceptions
5 filed by Mr. Bennington it says he was not guilty of
6 the offense. Well, this is a semantic argument I
7 suggest to you. Quite properly I suggest that he was
8 guilty of the offense. It's just because of the
9 system we have in New Jersey that the charges were
10 eventually dismissed against him. These are not
11 ancient offenses. We are only talking a couple of
12 years ago that he was in very serious trouble.

13 Mr. Bennington has told you, and I
14 think he mentioned it twice, that a captain, former
15 captain of the state police got up at this hearing and
16 said that this man, Mr. Buck, had the highest degree
17 of integrity, honesty and good character and should be
18 given a license in the casino industry. I attempted
19 to ask him on cross-examination concerning the
20 standards for hiring somebody in the state police
21 whether or not this type of person would be allowed to
22 be hired because clearly a person in the state police
23 would have to have honesty, good character and
24 integrity, but we were never allowed to have an answer
25 to that question. It was objected to. I suggest most

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1 strenuously that clearly Mr. Buck wouldn't have had
2 the honesty, good character and integrity as a member
3 of the state police nor does he have the honesty, good
4 character and integrity to be a licensee in the gaming
5 industry. Not at least at this time.

6 This case I suggest is not based upon
7 the factual substance as much as it is the lack of
8 candor and the lack of credibility of this man at the
9 time of the hearing because I suggest to you that that
10 weighs very heavily against any claim that he might
11 have toward showing good character, honesty and
12 integrity within the meaning of the Act.

13 For these reasons, the reasons that I
14 have stated in my reply to exceptions and the reasons
15 offered by the Administrative Law Judge I would ask
16 that you affirm and adopt the initial decision.

17 CHAIRMAN PERSKIE: Thank you.

18 Anybody on the Commission have any
19 questions of either counsel?

20 Comment or discussion?

21 A motion?

22 COMMISSIONER WATERS: Mr. Chairman, I
23 think there is one point that has been made by the
24 Division that is probably controlling, and I have no
25 way of coming to any conclusion different from that

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1 presented and it appears on page nine of the ALJ's
2 decision where he deals with the fact that he found
3 the respondent was not candid and forthright and
4 didn't seem to accept full responsibility for his
5 actions, a reluctant witness, and in his mind that
6 factor weighed against the conclusion of good
7 character, honesty and integrity. I think this is one
8 of the problems we run into and I don't know what the
9 conclusion may have been had he been forthright, or at
10 least met the standards that the ALJ found to be
11 forthright, it may have been the result would have
12 been different. But I didn't see the respondent at
13 the time of the hearing and as usual we defer I would
14 think to the ALJ's judgment since he was conducting
15 the hearing.

16 Therefore, I would move to affirm the
17 initial decision and deny the application for a casino
18 employee license.

19 VICE CHAIR ARMSTRONG: Second.

20 CHAIRMAN PERSKIE: Any other comment
21 or discussion?

22 Let me just indicate that there is on
23 the surface an apparent inconsistency at page nine and
24 I just want to reflect my own understanding, I
25 can--besides the language, because I think I

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1 understand the context, but if you look at it closely
2 the judge says at page nine at this same paragraph to
3 which Commissioner Waters was referring he said
4 admirably the petitioner has made substantial progress
5 toward rehabilitation and establishing his good
6 character, honesty and integrity over the past two
7 years, and here's what I want to emphasize, he has
8 accepted responsibility for his behavior to a
9 substantial degree, et cetera, and continuing, and
10 then three sentences later he was not totally candid
11 and forthright and did not seem to accept full
12 responsibility for his actions. I understand that
13 apparent inconsistency to reflect a distinction in the
14 judge's mind between responsibility for his conduct
15 and his behavior since this incident which is what he
16 is referring to in the first instance, in the second
17 case acknowledging responsibility for what he did or
18 the conduct that was the subject of these incidents in
19 the second instance, and that's the way I understand
20 what would otherwise appear to be an inconsistency.

21 With that understanding and for that
22 reason I am inclined to support the motion.

23 Any other comment or discussion?

24 On the motion all in favor will so
25 indicate.

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1 The record will reflect that the
2 motion carries unanimously.

3 (All Commissioners present voted in
4 favor of the motion)

5 CHAIRMAN PERSKIE: Thank you.

6 There being no appearance this
7 meeting is adjourned.

8 (At which time the meeting was
9 adjourned at 4:30 p.m.)

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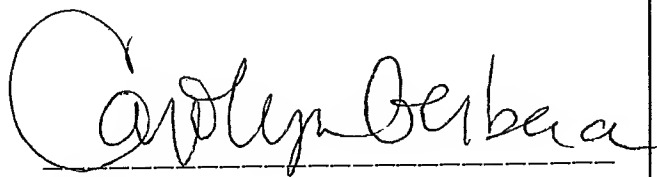
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C E R T I F I C A T E

I, CAROLYN GERBER, a Certified Shorthand Reporter and a Notary Public of the State of New Jersey, do hereby certify the foregoing to be a true and accurate transcript of my original stenographic notes taken at the time and place hereinbefore set forth.

A handwritten signature in cursive script, reading "Carolyn Gerber", written over a horizontal line.

CAROLYN GERBER, CSR

Dated: May 13, 1991.